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In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

Corporate Officers and Directors

Several recent decisions, reported in this issue, relate to the election of corporate officers, their statutory obligations and to corporations having common directors. In Louisiana, an agreement by certain stockholders and directors that a certain person should be annually elected president during three years was held invalid. (p. 32.) In Michigan, the legality of the election of corporate officers was not permitted to be questioned collaterally. (p. 33.) In New York, it was held a treasurer of a domestic corporation need prepare but one stockholders' financial statement during any one year under the statute, provided a copy is kept available for other stockholders during the remainder of the year. (p. 34.) A Pennsylvania court held interlocking directors incompetent to vote on a resolution involving dealings between their corporations, (p. 35) while in Rhode Island a lease between corporations having a common director was held voidable. (p. 35.)

Raymond Corbin

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for November

Registration of Trade Marks in Canada

A Canadian statute enacted several years ago which is of vital interest to those selling trade marked merchandise is the Dominion of Canada "Unfair Competition Act of 1932" (22-23 George V, Chapter 38). Section 30 of this Act contains provisions for the registration of trade marks with the Commissioner of Patents, Ottawa, including the appointment of an agent in Canada to whom notices relative to the registration may be sent and upon whom service of any proceedings regarding the registration may be made. The language of subdivision (1) of section 30 is as follows:

"30. (1) Any person who desires to register a trade mark under this Act otherwise than pursuant to a judgment, order or declaration of the Exchequer Court of Canada shall make an application in writing to the Registrar in duplicate containing

(a) a statement of the date from which the applicant or named predecessors in title has or have used the mark for the purposes defined in the application and of the countries in which the mark has been principally used since the said date;

(b) a statement that the applicant considers that, having regard to the provisions of this Act, he was and is entitled to adopt and use the mark in Canada in connection with the wares described; and

(c) the address of the applicant's principal office or place of business in Canada, if any, and if the applicant has no office or place of business in Canada, the address of his principal office or place of business abroad and the name and address in Canada of some person, firm or corporation to whom any notice in respect of the registration may be sent, and upon whom service of any proceedings in respect of the registration may be made with the same effect as if they had been served upon the applicant himself."

General conditions under which a trade mark may be registered are set forth in section 4 of the Act, which requires application for registration to be made within six months after the first use of the trade mark in Canada, or within six months of the date upon which it is first made known in Canada. The section also contains a provision that *"no person shall institute any proceedings in any court to prevent the infringement of any trade mark unless such trade mark is recorded in the register maintained pursuant to this Act."*

Domestic Corporations

Delaware.

Ruling in *Keller et al. v. Wilson & Co., Inc.*, applied to corporation created after 1927 amendment of section 26 of the General Corporation Law. In *Keller et al. v. Wilson & Co., Inc.*, 190 A. 115, (The Corporation Journal, December 1936, page 270), the Supreme Court of Delaware held, as to a corporation organized prior to the 1927 amendment of section 26 of the General Corporation Law, that a vested right to accrued dividends may not be destroyed by amendment of the corporate charter as to dividends accrued up to the time of the adoption of the amendment. In a decision rendered September 15, 1937, the Chancellor said: "The case is exactly similar in principle in all but one respect to *Keller, et al., v. Wilson & Co., Inc.*, 190 A. 115, decided by the Supreme Court of this State on November 10, 1936. The only distinguishing feature consists of this, viz., that in the *Keller* case the corporation was created before the amendment to the General Corporation Law in 1927, whereas the corporation in this case was created after said amendment of 1927. As the enactment of 1927 purports to enlarge the power of corporations to amend their own charters, and as the defendant was created after this enlarged power of self-amendment of charters was conferred, and as, it is contended, the amendment of the charter which is proposed in this case is such as comes within the scope of the enlarged power, it follows, so the defendant argues, that the instant case does not fall within the principle of *Keller, et al., v. Wilson & Co., Inc., supra*. The defendant having been created since the amendment to the act of 1927, it is undoubtedly in better position to claim the full measure of power which the amendment to the act of 1927 confers, than was the defendant in the *Keller* case. I find language in the opinion of the court in *Keller, et al., v. Wilson & Co.*, however, which, as I understand it, makes the law as there declared equally applicable to the situation of the defendant here." A decree voiding a proposed amendment was granted. *Johnson v. Consolidated Film Industries, Inc.*, Court of Chancery, New Castle County, September 15, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 183332. Howard Duane, for complainant. Hugh M. Morris and Edwin D. Steel, Jr., for defendant. *(Note: We are informed that an appeal has been taken in this case to the Delaware Supreme Court.)*

Stockholder delaying in surrendering stock after reclassification held barred from restoration to original position by reason of laches. In *Trounstein v. Remington Rand, Inc.*, the Chancellor holds that where a stockholder voted his shares in opposition to an amendment reclassifying the corporation's stock, there being arrears in cumulative dividends on the class of stock held by him, and where, almost a year after the amendment became effective, he tendered his stock for new stock under the reclassification, which he received, together with dividends, both in stock and cash, the stockholder is barred

by laches from obtaining relief by way of restoration of the original capital structure of the company. With reference to the stockholder's claim for arrearages on the old stock, while retaining all benefits secured through the surrender of the stock, the court held such a position as untenable and refused to grant such relief. *Lewis J. Trounstein v. Remington Rand, Inc.*, Court of Chancery, New Castle County, July 21, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 181985; 194A.95. Stewart Lynch of Wilmington, Jacob K. Javits, Selig J. Levitan and Emanuel Becker of New York City, for the complainant. Caleb S. Layton of Richards, Layton & Finger of Wilmington, for defendant.

A voting trust formed for a period in excess of ten years is void. Such is the holding of the Chancellor in connection with a voting trust formed on April 1, 1930, which was "to continue in full force and effect until April 1st, 1941." Sec. 18 of the Gen. Corp. Law (Sec. 2050, Revised Code, 1935) provides that a voting trust agreement may have a duration for any period of time "not exceeding ten years." "It is hard to believe," observed the Chancellor, "that parties would by the use of 1941 deliberately draft an instrument which the statute condemned. But it has never been held that illegality in an instrument is in itself a justification for construing its terms so as to make it legal. If the use of the date of 1941 was in truth the result of a mistake, I must nevertheless hold on this demurrer that the instrument stands as written. So holding, the trust is one whose duration is forbidden by the statute." *Perry v. Missouri-Kansas Pipe Line Company et al.*, 191 A. 823. Commerce Clearing House Court Decisions Reporting Service Requisition No. 177315. William Prickett of Wilmington and Kenneth E. Walser (of Spence, Hopkins, Walser & Hotchkiss) of New York City, for complainant. Caleb S. Layton (of Richards, Layton & Finger) of Wilmington and Dupuy G. Warrick of Kansas City, Mo., for demurrant.

Georgia.

Removal of corporation's property from county of domicile to another county in the state does not furnish ground for attachment against the corporation. A Georgia corporation had discontinued its business in the county in which its charter had been obtained and was about to move its property to another county, where the officers resided. The Supreme Court of Georgia, after observing that "in order to effectuate removal of the corporation's domicile, regular legal steps must be taken and the charter itself amended so as to change the domicile," ruled that the action of the officers in planning the removal of the corporate property to another county, "did not authorize an inference that the corporation was actually removing or about to remove from the county of its domicile, or furnish ground for attachment at the instance of the creditor against the corporation." *United States Fidelity & Guaranty Co. et al. v. Lawrence*, 190 S. E. 346. Martin, Martin & Snow of Macon, for plaintiffs in error. Sibley & Allen of Milledgeville, for defendants in error.

Louisiana.

Agreement by certain stockholders and directors that plaintiff director should be annually elected president during three years, held invalid. Defendants and plaintiff together owned a majority of the voting shares of a corporation and constituted a majority of the members of the board of directors. Plaintiff seeks to recover under a verbal agreement between himself and defendants under which he was to be president of the corporation for three years. The term of office of president was one year. The Supreme Court of Louisiana pointed out that "the obligation which the defendants in this case undertook was a pledge of the votes of a majority of the members of the board of directors of the corporation, to be cast in favor of the plaintiff, at each annual election of officers during the period of three years." It held such an undertaking to be invalid, as it bartered away, in advance of election, the authority of a board of directors to elect a president. *Williams v. Fredericks et al.*, 175 So. 642. Philip Gensler of New Orleans, for appellant. A. P. Tureaud of New Orleans, for certain appellees. E. A. Parsons of New Orleans and J. B. Nachman of Alexandria, for other appellees.

An administrator has authority to vote the stock owned by the estate he administers. In *Davidson v. American Paper Mfg. Co., Inc., et al.*, 175 So. 753, the Supreme Court of Louisiana said: "The question squarely presented by counsel for defendants is whether the administrator of a succession may vote the shares of stock standing in the name of and owned by the succession which he administers. So far as we know, this question has never been passed upon by this court; the reason probably being that no one has heretofore questioned the right of the administrator to do so. The question has, however, been decided by courts of other jurisdictions, and apparently they have uniformly held that an administrator or an executor of a succession may vote the stock owned by the succession at a stockholders' meeting." The court followed the general rule by upholding the right of an administrator to vote such shares. Claude L. Johnson and Severn T. Darden of New Orleans, for appellants. St. Clair Adams & Son of New Orleans, for appellee.

Manitoba.

Stockholders' action in vesting control of company in one person, through issuance of majority stock to him, held valid. The question raised by the appellant was whether a company might transfer the majority of its outstanding shares, by resolution of its stockholders, unanimously adopted, to one person, its manager, so as to vest control in him. The Manitoba Court of Appeal observed: "Agreements by shareholders for voting control are common. Here the shareholders could have appointed him trustee of their shares by agreement, empowering him to vote thereon in accordance with his discretion or they could have agreed that his 30 shares should have a preponderating voting power. Founders' shares, for instance,

are sometimes given rights to a preferential position in the sharing of profits, and in the division of surplus assets. Likewise the shareholders could have contracted with him to vote in a particular way on all occasions." Continuing, the court said: "I know of nothing in the company's constitution or in the Act, or from the point of view of the public interest, which prevents shareholders, so long as they, or a majority, in good faith consent, from being bound by an agreement that the company's management and government in all respects shall be entirely left to one person." "The arrangement having been adopted by all the shareholders for the benefit of the company seems to be wholly a matter of internal management, with which the Court may not interfere." *Waschysyn v. Kildonan Ice & Fuel Co. et al.*, (1937) 2 D.L.R. 653. W. P. Fillmore, K.C., and S. Greenberg, for appellant. I. Nitikman, for respondent.

Michigan.

The legality of the election of corporate officers cannot be questioned collaterally. Defendants, in this ejectment action, disputed the validity of plaintiff's title. The conveyance to plaintiff had been made by officers of a corporation shortly after the company's charter had been forfeited. The deed had, however, been authorized at a meeting of the company held one day prior to the date on which the charter had been forfeited, at which meeting the officers signing the deed had been elected. The Supreme Court of Michigan, in giving judgment for the plaintiff, said: "The legality of the election of corporate officers cannot be brought collaterally in question, but proceedings must be instituted for the express purpose of trying and evicting them if not entitled to the offices which they have assumed to exercise." "The corporation, after the forfeiture of its charter and incidental with the proceedings to wind up its affairs, had authority to convey all of its property to a trustee, in trust, to be distributed among its shareholders with a view to winding up its concerns." *Bruun v. Cook et al.*, 273 N. W. 774. F. Norman Higgs (Clark & Henry, of counsel) of Bay City, for appellant. William T. Yeo of West Branch, for appellees.

Montana.

Treasurer of company, failing to supply stockholder with statement of its affairs upon demand, may be sued in county in which the company's principal office is located. In an action against defendant treasurer of a company, in which plaintiff bank was a stockholder, to recover penalties for defendant's failure to supply plaintiff, after demand, with a statement of the affairs of the company under section 5957, R. C., the Montana Supreme Court ruled that the lower court had acted properly when it granted a change of venue from the county in which plaintiff stockholder's principal office was located to the county in which defendant treasurer resided and in which the principal office of defendant's corporation was located.

as the cause of action arose in the county in which defendant's alleged wrongful act occurred. *Stanton Trust & Savings Bank v. James W. Johnson,* Montana Supreme Court, March 9, 1937; 65 P. (2d) 1188. Commerce Clearing House Court Decisions Reporting Service Requisition No. 173780. Cooper, Stephenson & Glover and George H. Stanton of Great Falls, for appellant. E. K. Cheadle, Jr., of Shelby, for respondent.

New York.

Treasurer need prepare only one financial statement for stockholders during any one year under section 77, Stock Corporation Law, provided copy is kept on file for inspection of other stockholders during remainder of year. The Albany County Court, in *Strope v. Albany Steel & Iron Supply Co., Inc.,* 297 N. Y. S. 8, had occasion to determine the extent to which stockholders owning three per centum of the shares of a corporation may demand financial statements of treasurers or other fiscal officers during any one year under section 77 of the Stock Corporation Law. The court's conclusions were as follows: "I am convinced that the true meaning and intent of section 77 is that the treasurer can only be required to make and deliver one such financial statement to any stockholder, or stockholders, during any 1 year, provided he keeps a copy of the same on file for 12 months after delivery to the stockholder so requesting the same, subject to the inspection of all other stockholders demanding examination thereof. The remedy of all stockholders other than the first one to request a statement in any 1 year, is the privilege of examination of the copy kept on file in the office of the corporation." Murphy, Aldrich, Guy & Broderick (Morris Simon, of counsel) of Troy, for plaintiff. George M. Simon of Albany, for defendant.

Use of similar names reviewed. A New Jersey corporation, "The Barber Co. Inc.," sought authority to do business in New York in an action in which a New York corporation, "Barber & Co. Inc.," sought to intervene, the Secretary of State having declined to issue a certificate to the New Jersey company on the ground that the name of the latter so closely resembled that of the New York corporation as to be calculated to deceive. The New York Supreme Court, Appellate Division, Third Department, after reviewing the history of the two companies and noting that they were engaged in widely differing types of business, concluded that there was not so close a resemblance in name as to be calculated to deceive, and left the New York company "to its recourse in equity" if the New Jersey corporation's use of its name tended to damage the New York company or confuse the public to its detriment. *The Barber Company, Inc. v. The Department of State et al.,* New York Supreme Court, Appellate Division, Third Department, July 2, 1937; 297 N. Y. S. 939. Commerce Clearing House Court Decisions Reporting Service Requisition No. 181707. Chadbourne, Wallace, Parke & Whiteside (P. C. Dugan, Ralph D. Ray, of counsel) of

New York City, for petitioner. John J. Bennett, Jr., Attorney General, (Henry Epstein, Solicitor General, Joseph M. Mesnig, Asst. Attorney General, F. R. Chant, Asst. Attorney General, of counsel), of Albany, for respondents. Herman Goldman (Elkan Turk, Milton J. Levitt, of counsel) of New York City, for intervening respondent.

Pennsylvania.

Interlocking directors held incompetent to vote on resolution involving dealings between their corporations. In *Bowman v. Gum, Inc. et al.*, 193 A. 271, the Supreme Court of Pennsylvania passed upon a question as to whether directors of defendant company, who also served on the board of a company with which defendant dealt, were qualified or competent to vote on a resolution involving the price defendant paid the other company for its products, because of their pecuniary interest in the transaction. It was held that they had an adverse interest which prevented them from being qualified to vote upon such a resolution. Walter T. Fahy and Daniel C. Donoghue of Philadelphia, for appellants. Harry Shapiro of Philadelphia, for appellee.

Rhode Island.

Lease between corporations having a common director held voidable under statute. Two corporations, having a common director named Sweet on their boards, entered into a lease which was signed by this director on behalf of each party. He signed as Secretary of one corporation and for the other without noting any official capacity. Section 21, Chapter 248 of General Laws of 1923, providing that contracts might be entered into between corporations having a common director or directors, also provided "that the contracting or common director or directors shall not vote on the question and shall not be counted in ascertaining whether or not a quorum is present for this purpose at the meeting." The receiver for the lessee corporation contended the lease was not valid and this contention was upheld, under the evidence, by the Supreme Court of Rhode Island, which said: "The burden of proof is upon the lessor, seeking to show the lease and renewal valid, to satisfy the court by a fair preponderance of the evidence that the provisions of the statute in question were complied with. It has not sustained that burden. In our opinion, the only reasonable inferences and presumptions from the undisputed testimony of Sweet are that he participated in the meetings of the boards of directors of both corporations when the matter of the lease in question came before them, and voted, when called upon. The matter of the renewal of the lease was taken care of at these meetings. In our judgment, therefore, since the procedure set out in the statute, which we have construed to be mandatory, was not followed when the two corporations attempted to contract with each other, the lease and the renewal thereof are not valid." *Matteson v. Wm. S. Sweet & Son, Inc.*, 193 A. 171. Hart, Gainer & Carr and Edward G. Carr of Providence.

WANTED:

Superhuman Secretary

THE corporation lawyer's job is not an easy one, judged by any standard. To guide his corporation client along the right course, the safe course, as a pilot does a ship, requires — in addition, of course, to his legal ability — a tremendous amount of downright, honest-to-goodness *hard work.* So much, in fact, that tiresome details often take up time which could be better used in the actual application of his knowledge of the law.

To help the attorney safeguard the welfare of those corporation-clients which are qualified to do business in foreign states, the mechanism of corporate representation by The Corporation Trust Company, C T Corporation System and associated companies serves as a sort of superhuman secretary, a gigantic, automatic-bring-up filing system for lawyers.

Continuous maintenance of the registered agent at the registered address, careful forwarding of process and communications served on the company, systematic notification of reports and taxes due, complete, prompt information on new laws, new rulings, new decisions — these factors of C T representation save the lawyer's time for *law* work.

for Providence Fruit & Produce Building, Inc. Arabian, Gonnella & Barad of Providence, for receiver.

Foreign Corporations

British Columbia.

Rejection of deed bearing facsimile seal, when presented for registration, upheld. A grantee under a deed, made by a company incorporated as a trust company under the laws of the Province of Quebec, sought to compel the registration of the deed which had been rejected by a British Columbia Registrar because a duplicate facsimile seal was affixed. The British Columbia Court of Appeal observed: "The Registrar of Titles must be satisfied that the document is genuine before he registers it, under penalty that the insurance clause of the Land Registry Act, R.S.B.C. 1934, c. 127, will be liable if the document is not genuine. He further has to take great care where he has any doubt as to the genuineness of the document. I think therefore that he was justified in refusing to register the document and that it was the duty of the Montreal Trust Co. to make good the deficiency by themselves signing and affixing the common seal of the company." *Re Land Registry Act, re Baird,* (1937) 3 D.L.R. 484. W. E. Burns, K.C., for appellant. H. A. Maclean, K.C., for respondent.

Iowa.

Single transaction does not constitute doing business. In considering whether a defendant foreign corporation, seeking to quash service of process made under the statute upon the Secretary of State as its agent for such service, had been engaged in business so as to be amenable to service, the Iowa Supreme Court said: "We conclude from an examination of the whole record that as the statute by its terms only applies to a corporation 'doing business' in Iowa, that it has no application to the appealing defendant, for it was not engaged in doing business in Iowa within the meaning of such statute. It had no office in Iowa, it had no representative in Iowa; it had, at best, only one transaction in Iowa, and that is the sale of the timber to plaintiff, if we take the allegations of the petition to be true." The service was therefore set aside. *Keokuk & Hamilton Bridge Company v. Curtin-Howe Corporation et al.,** Iowa Supreme Court, June 15, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 179881; 274 N. W. 78. Hollingsworth & Hollingsworth of Keokuk, for appellee. J. O. Boyd of Keokuk, for appellant.

* The full text of this opinion is printed in The Corporation Tax Service. Iowa volume, page 516.

Iowa—District of Columbia.

Physician employed by a foreign insurance company held not to be an agent or employee upon whom service of process might be

made. In this case, the United States Circuit Court of Appeals, Eighth Circuit, had before it a suit in Iowa based on a judgment obtained against defendant Iowa insurance company by default after alleged service upon the company had been made by serving a District of Columbia physician who, from time to time, examined members of defendant association residing in the District of Columbia. Service of process in actions against a foreign corporation being required by statute to be made upon an officer, agent or employee, the court held that "the mere insuring of residents of a foreign state, the contract of insurance being made and being carried out in the home state of the association, does not constitute 'doing business' in the state of the insured." The physician was also held not to be a person who represented the association to such an extent that it could be said to be present within the District. *Sasnett v. Iowa State Traveling Men's Ass'n.*,* 90 F. (2d) 514. W. Gwynn Gardiner of Washington, D. C., (Addison Parker of Des Moines, Iowa, and James M. Earnest, of Washington, D. C., on the brief), for appellant. Earl C. Mills of Des Moines, Iowa, for appellee. **(Petition for writ of certiorari filed in the Supreme Court of the United States, July 12, 1937. Certiorari denied, October 11, 1937.)**

* The full text of this opinion is printed in **The Corporation Tax Service**, Iowa volume, page 521.

Massachusetts.

Massachusetts court entertains suit involving affairs of Maine corporation having its principal place of business in Massachusetts. In an action instituted in Massachusetts by a Maine corporation, having a principal place of business in Massachusetts, against certain of its officers and directors, alleging wrongful acts on the part of the defendants, the Supreme Judicial Court of Massachusetts, in ruling that the courts of that jurisdiction might properly entertain such a suit, observed: "The suit does not, in our opinion, so far involve the internal affairs of a foreign corporation that it ought not to be heard in the courts of this Commonwealth. Although in legal theory the plaintiff is a resident of Maine, its principal place of business is alleged to be in this Commonwealth. All of the defendants are alleged to be residents of this Commonwealth. It is reasonably inferable from the bill that the acts complained of were performed in this Commonwealth and that the evidence, both documentary and oral, relating to them would be more readily available here than elsewhere." *Lydia E. Pinkham Medicine Co. v. Gove et al.*, 9 N. E. (2d) 573. J. W. Worthen and E. B. Cook of Boston, for plaintiff. J. C. Reilly, T. Hunt and F. T. Hammond, Jr., of Boston, for defendants.

New York.

Officers and directors of a Delaware corporation, dissolved four years ago, may not be compelled by mandamus to submit records of corporations to inspection of stockholder. A stockholder sought to

compel the inspection of the books, papers and records of a Delaware corporation, which had been dissolved four years previously in accordance with sec. 39 of the Delaware General Corporation Law. The Supreme Court of New York, Appellate Division, First Department, said: "When the certificate of dissolution was issued the corporation had ceased to function. The statute, however, permitted its continuance for three years after the date of dissolution for purposes of suit by or against the corporation, to dispose of its property, and to divide its capital stock (General Corporation Act of the State of Delaware, sec. 40). Concededly, no suits had been instituted by or against the corporation during the three-year interval which ended on March 17, 1936. This proceeding has been initiated almost a year after the termination of that period." "Here," continued the court, "the corporation became extinct three years after the certificate of dissolution had been filed, and the directors and officers of the old corporation no longer had any official capacity. The court had accordingly lost its general visitorial powers, and the former officers and directors should not be required by mandamus to submit to an examination the books and property of the old corporation." *Lehrich v. Sixth Avenue Bancorporation, Inc., et al.*, 296 N. Y. S. 358. Breed, Abbott & Morgan (William L. Hanaway, of counsel) for appellants. Hymand D. Lehrich, for respondent.

Section 977-b of Civil Practice Act, providing for receivers of property of foreign corporations under certain circumstances, held valid. The Supreme Court of New York, Appellate Division, Second Department, in passing upon section 997-b of the Civil Practice Act, permitting the appointment of receivers to liquidate the local assets of foreign corporations which have been dissolved, liquidated, nationalized, whose charters have been suspended or annulled, or which have ceased to do business, whether voluntarily or otherwise, holds the section to be constitutional. The court remarked that the statute "clearly contemplates its application to liquidation instituted prior to the time it went into effect, so long as physical possession of the property is available here." *Oliner v. American-Oriental Banking Corporation*, 297 N. Y. S. 432. Jacob Krisel of New York City, for appellant. Harold H. Feigin of New York City, for respondent.

Utah.

Service of process, on traveling salesman soliciting orders in interstate commerce, set aside. The salesman of a foreign corporation obtained orders in Utah which were sent to the branch office of the company at Kansas City, and, if accepted, the goods were sent to the purchasers in interstate commerce. Such activities were held not to constitute doing business in Utah so as to render the corporation amenable to service of process. Process served upon the salesman was ordered quashed by the Utah Supreme Court. *Parke, Davis and Company v. Fifth Judicial District Court, County of Beaver, et al.*, July 17, 1937. CCH CDR Service Requisition No. 181678. (Utah CT, page 505.)

Virginia.

Manufacture of product of unlicensed foreign corporation by another company in Virginia under supervision of foreign corporation's agent, coupled with filling of orders from product manufactured, held "doing business;" service of process on the agent upheld. The United States Circuit Court of Appeals, Fourth Circuit, rules that where a foreign corporation entered into a contract with a company in Virginia, the latter to manufacture the foreign corporation's product in that state, with shipments to be made upon directions received from the foreign corporation's office outside the state to customers in Virginia and neighboring states, it must be regarded as "doing business" in Virginia. Service of process was held to be valid upon the foreign corporation, where it was made upon an agent within the state who spent his usual business hours at the manufacturing plant, presumably exercising supervision of the manufacture of the foreign corporation's material under its own formulas, and conducted correspondence on behalf of the foreign corporation there on stationery bearing its name and implying it maintained a Virginia office. *Certain-Teed Products Corporation v. Wallinger, et al.,** 89 F. (2d) 427. William A. Stuart of Abingdon, Va., and Howard C. Gilmer, Jr., of Pulaski, Va., (Howard C. Gilmer of Pulaski, Va., on the brief), for Wallinger and another. J. P. Buchanan of Marion, Va., (William B. Shealy of New York City, on the brief), for Certain-Teed Products Corporation. **(Petition for writ of certiorari filed in the Supreme Court of the United States, June 29, 1937. Docket No. 180. Certiorari denied, October 11, 1937.)**

* Excerpts from this opinion are printed in **The Corporation Tax Service**, Virginia volume, page 157.

Taxation

California.

Domestic corporation whose corporate powers were suspended for failure to pay franchise tax, held incapable of defending suit. Where the corporate powers of appellant company had been suspended under a statute suspending "corporate powers, rights and privileges" for failure to pay the franchise tax, the Supreme Court of California holds that such a deprivation of corporate rights left appellant without power to defend an action which had been brought against it or to appeal from a judgment in a lower court. *Boyle et al. v. Lakeview Creamery Co. et al.,** 68 P. (2d) 968. S. Y. Allen of Los Angeles, for appellants. Lewis D. Collings and Amos Friedman of Los Angeles, for respondents.

* The full text of this opinion is printed in **The Corporation Tax Service**, California volume, page 235-106.

Missouri.

A corporation, seeking to extend its existence perpetually, must pay a fee based on its capital stock as provided in section 4556. Relator corporation endeavored, by mandamus, to compel respondent secretary of state to accept and file a statement amending its articles of association by extending its corporate existence perpetually, claiming no fee based upon the capital stock was due, as demanded by the secretary of state, under section 4556, Missouri Revised Statutes, 1929, on the ground that this section had been repealed by Laws of Missouri, 1931, page 297, now section 4556a. Both sections related to the extension of the corporate existence of Missouri companies. The Supreme Court of Missouri, after an examination of these sections, held that no repeal was intended by the legislature and that a payment of the fee outlined in section 4556 was necessary to effect the extension of the corporate existence of the company. *State ex rel. and to Use of Geo. B. Peck Co. v. Brown, Secretary of State,** 105 S. W. (2d) 909. Langworthy, Spencer, Terrell & Matz of Kansas City, for relator. Roy McKittrick, Atty. General, and Franklin E. Reagan, Asst. Atty. General, for respondent.

***The full text of this opinion is printed in The Corporation Tax Service. Missouri volume, page 177.**

New Jersey.

Cash on hand held taxable for ad valorem purposes. A telephone company, the prosecutor, contended its cash on hand was entitled to an exemption from taxation under P. L. 1933, c. 165, p. 346, which added the following to property exempt: "Cash on hand or on deposit and loans on collateral of savings banks, mutual savings banks and institutions for savings organized under the laws of this State." The Supreme Court of New Jersey having previously held that the "cash on hand or on deposit" mentioned in the statute did not relate to such property of general corporations but was limited only to that of savings institutions (*City of Newark v. New Jersey State Board of Tax Appeals, et al.*, 118 N. J. Law 131, 191 A. 843), followed its previous ruling and held the cash on hand of the prosecutor company subject to taxation. *New Jersey Bell Telephone Co. v. City of Newark,** 193 A. 844. Frankland Briggs, Leonard A. Sweney, J. H. Harrison and Robert F. Darby of Newark, for prosecutor. Frank A. Boettner and John A. Matthews of Newark, for respondent.

***The full text of this opinion is printed in The Corporation Tax Service. New Jersey volume, page 2593.**

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

INDIANA—MICHIGAN. Docket No. 98. *R. D. Baker Company v. William Rarden and John Rarden,* 271 N. W. 712. (The Corporation Journal, May, 1937, page 398.) Mailing of notice as essential to valid service on foreign corporation. **Petition for writ of certiorari filed May 29, 1937. Certiorari denied, October 11, 1937.**

IOWA—DISTRICT OF COLUMBIA. Docket No. 211. *Sasnett v. Iowa State Traveling Men's Association,* 90 F. (2d) 514. (The Corporation Journal, November, 1937, page 38.) Foreign corporation—whether "doing business"—service on agent. **Petition for writ of certiorari filed July 12, 1937. Certiorari denied, October 11, 1937.**

LOUISIANA. Docket No. 652. *Great Atlantic & Pacific Tea Company v. Grosjean, Supervisor of Public Accounts et al.,* 16 F. Supp. 499, (The Corporation Journal, November, 1936, page 256). Constitutionality of Louisiana Chain Store Tax. **Appeal filed January 14, 1937. Probable jurisdiction noted February 1, 1937. Argued March 30 and 31, 1937. Decree affirmed, May 17, 1937,** (The Corporation Journal, October, 1937, page 14.) **Rehearing denied, October 11, 1937.**

MISSOURI. Docket No. 4. *Phillips Pipe Line Company v. The State of Missouri,* 97 S. W. (2d) 109. (The Corporation Journal, January, 1937, page 303.) Validity of franchise tax as applied to activities of a pipe line company. **Appeal filed February 5, 1937. Further consideration of the question of jurisdiction postponed to the hearing of the case on the merits, March 1, 1937. On motion of the Attorney General of the State of Missouri this case is continued to the October Term, 1937, March 29, 1937. Affirmed, per curiam opinion, October 11, 1937.**

VIRGINIA. Docket No. 1. *The Atlantic Refining Company v. Commonwealth of Virginia,* 183 S. E. 243. (The Corporation Journal, March, 1936, page 136.) Validity of foreign corporation entrance fee. **Appeal filed April 24, 1936. Jurisdiction postponed to hearing of case on its merits, May 18, 1936. Argument concluded October 22, 1936. Restored to the docket for reargument and continued, to the October Term, 1937, June 1, 1937. Reargued, October 11, 1937.**

VIRGINIA. Docket No. 180. *Certain-Teed Products Corporation v. G. J. Wallinger, Trustee in Bankruptcy of Beaver Products Co. of Virginia, et al.,* 89 F. (2d) 427. (The Corporation Journal, November, 1937, page 41.) Whether foreign corporation doing business. **Petition for writ of certiorari filed June 29, 1937. Certiorari denied, October 11, 1937.**

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* Data compiled from CCH **U. S. Supreme Court Service, 1937-1938.**

Regulations and Rulings

ALABAMA—The value of shares of stock in a foreign corporation owned by a domestic corporation should not be deducted in arriving at the value of the shares of a domestic corporation for ad valorem tax purposes, in the opinion of the Attorney General of Alabama. (Reported in full on page 2549 of The Corporation Tax Service for Alabama.)

ARIZONA—Gross Income (Sales) Tax Regulations issued by the State Tax Commission are printed in the Arizona CT Service, beginning on page 493-27.

DISTRICT OF COLUMBIA—Rules and Regulations relating to the new District tax on the privilege of doing business based on gross receipts, adopted by the Commissioners of the District, are shown in the District of Columbia volume of The Corporation Tax Service, on page 4551 and subsequent pages.

KENTUCKY—A regulation issued by the Commissioner of Revenue governing the taxation of non-operating tangible and intangible property of public utilities is set forth in full at ¶ 82-102 of the "Utilities Taxes" section of the Kentucky Corporation Tax Service.

MARYLAND—Income Tax Regulations governing the withholding of the tax in connection with payments made to non-residents and information returns are printed in full text in the Maryland CT Service, pages 1151 to 1154.

MICHIGAN—The Attorney General has advised the State Board of Tax Administration that the sales tax should be collected upon the total consideration received from a sale, including money, credits, property, etc., and not only upon the actual cash involved in the sale, and that where property accepted as a trade-in toward the payment of other property is itself sold, a sales tax should be collected on that sale also. (Michigan CT, page 575-80.)

NORTH DAKOTA—The full text of the new Sales Tax Regulations is printed in the CT Service for North Dakota, page 5551 et seq.

OHIO—The Personal Property Tax Manual as revised by the Tax Commission of Ohio for 1937 appears in The Ohio Corporation Tax Service, beginning on page 341.

OKLAHOMA—Rules and regulations and questions and answers construing the new sales and use taxes are reproduced on page 3551 and subsequent pages of The Corporation Tax Service for Oklahoma.

TENNESSEE—The Attorney General has rendered an opinion to the Department of Finance and Taxation that a coal company which maintains several coal yards is not liable for the privilege tax imposed on chain stores, but must pay the tax imposed on coal dealers and each delivery yard maintained. (Tennessee CT Service, page 7560.)

UTAH—The new Use Tax Regulations are shown in the Corporation Tax Service, Utah, pages 6037-6038.

WEST VIRGINIA—The Business and Occupation Tax Rulings and Regulations issued by the State Tax Commissioner are reprinted on pages 6053 to 6065 of the West Virginia Corporation Tax Service.

Some Important Matters for November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report and Tax due on or before January 1.—Domestic and Foreign Corporations.

NEW YORK—Second installment of Income Tax of Business Corporations due on or before November 15.—Domestic and Foreign Business Corporations other than real estate and holding companies.*

Supplementary Franchise Tax Return (Form 60 CT) due on or before November 30.—Domestic and Foreign Corporations organized or qualified between May 15 and November 1 of current year.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1936 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

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* *Change in due date effected by Chapter 496, Laws of 1937.*

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as corporate representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, and of the Supreme Court of New Mexico in Silva v. Crombie & Co. —two decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1937.

New Deal Laws of Importance to Corporations. Contains complete text of Securities Act of 1933 as amended by Title II of the Securities Exchange Act of 1934, all matters in the original act omitted in the 1934 amendments being set in brackets, and all new matters added by the 1934 amendments being set in italics; complete text of the Securities Exchange Act of 1934; and complete text of the amendments approved June 7, 1934 to the Bankruptcy Act providing for corporate reorganizations.

The New Bankruptcy Law. Contains, first, the eleven-word amendment approved June 18, 1934 to the original amendment to the Bankruptcy Act approved June 7, 1934 (and published in our pamphlet New Deal Laws described above); second, two examples of voluntary petition for reorganization under the new provisions; and third, two examples of petitions under the new provisions for appointment of trustees (reorganization sought).

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Special Report. The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

What Constitutes Doing Business. (Revised to September 1, 1937.) A 168-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.